

Union Calendar No. 703

115TH CONGRESS
2D SESSION

H. R. 6430

[Report No. 115–907]

To amend the Homeland Security Act of 2002 to authorize the Secretary of Homeland Security to implement certain requirements for information relating to supply chain risk, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2018

Mr. KING of New York (for himself, Mr. PERRY, Miss RICE of New York, Mr. CORREA, Mr. THOMPSON of Mississippi, Mr. McCAUL, and Mr. PAYNE) introduced the following bill; which was referred to the Committee on Homeland Security

AUGUST 28, 2018

Additional sponsor: Mr. DONOVAN

AUGUST 28, 2018

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Homeland Security Act of 2002 to authorize the Secretary of Homeland Security to implement certain requirements for information relating to supply chain risk, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Securing the Home-
5 land Security Supply Chain Act of 2018”.

6 SEC. 2. DEPARTMENT OF HOMELAND SECURITY REQUIRE-

7 MENTS FOR INFORMATION RELATING TO
8 SUPPLY CHAIN RISK.

9 (a) IN GENERAL.—Subtitle D of title VIII of the
10 Homeland Security Act of 2002 (6 U.S.C. 391 et seq.)
11 is amended by adding at the end the following new section:

12 "SEC. 836. REQUIREMENTS FOR INFORMATION RELATING
13 TO SUPPLY CHAIN RISK.

14 "(a) AUTHORITY.—Subject to subsection (b), the
15 Secretary may—

16 “(1) carry out a covered procurement action;

17 “(2) limit, notwithstanding any other provision
18 of law, in whole or in part, the disclosure of informa-
19 tion, including classified information, relating to the
20 basis for carrying out such an action; and

21 “(3) exclude, in whole or in part, a source car-
22 ried out in the course of such an action applicable
23 to a covered procurement of the Department.

24 "(b) DETERMINATION AND NOTIFICATION.—Except
25 as authorized by subsection (c) to address an urgent na-

1 tional security interest, the Secretary may exercise the au-
2 thority provided in subsection (a) only after—

3 “(1) obtaining a joint recommendation, in un-
4 classified or classified form, from the Chief Acquisi-
5 tion Officer and the Chief Information Officer of
6 Department, including a review of any risk assess-
7 ment made available by an appropriate person or en-
8 tity, that there is a significant supply chain risk in
9 a covered procurement;

10 “(2) notifying any source named in the joint
11 recommendation described in paragraph (1) advis-
12 ing—

13 “(A) that a recommendation has been ob-
14 tained;

15 “(B) to the extent consistent with the na-
16 tional security and law enforcement interests,
17 the basis for such recommendation;

18 “(C) that, within 30 days after receipt of
19 notice, such source may submit information and
20 argument in opposition to such recomme-
21 ndation; and

22 “(D) of the procedures governing the con-
23 sideration of such submission and the possible
24 exercise of the authority provided in subsection
25 (a);

1 “(3) notifying the relevant components of the
2 Department that such risk assessment has dem-
3 onstrated significant supply chain risk to a covered
4 procurement; and

5 “(4) making a determination in writing, in un-
6 classified or classified form, that after considering
7 any information submitted by a source under para-
8 graph (2), and in consultation with the Chief Infor-
9 mation Officer of the Department, that—

10 “(A) use of authority under subsection
11 (a)(1) is necessary to protect national security
12 by reducing supply chain risk;

13 “(B) less intrusive measures are not rea-
14 sonably available to reduce such risk;

15 “(C) a decision to limit disclosure of infor-
16 mation under subsection (a)(2) is necessary to
17 protect national security interest; and

18 “(D) the use of such authorities will apply
19 to a single covered procurement or a class of
20 covered procurements, and otherwise specifies
21 the scope of such determination;

22 “(5) providing to the Committee on Homeland
23 Security of the House of Representatives and the
24 Committee on Homeland Security and Governmental
25 Affairs of the Senate a classified or unclassified no-

1 tice of the determination made under paragraph (4)
2 that includes—

3 “(A) the joint recommendation described
4 in paragraph (1);

5 “(B) a summary of any risk assessment re-
6 viewed in support of such joint recommenda-
7 tion; and

8 “(C) a summary of the basis for such de-
9 termination, including a discussion of less in-
10 trusive measures that were considered and why
11 such measures were not reasonably available to
12 reduce supply chain risk;

13 “(6) notifying the Director of the Office of
14 Management and Budget, and the heads of other
15 Federal agencies as appropriate, in a manner and to
16 the extent consistent with the requirements of na-
17 tional security; and

18 “(7) taking steps to maintain the confidentiality
19 of any notifications under this subsection.

20 “(c) PROCEDURES TO ADDRESS URGENT NATIONAL
21 SECURITY INTERESTS.—In any case in which the Sec-
22 retary determines that national security interests require
23 the immediate exercise of the authorities under subsection
24 (a), the Secretary—

1 “(1) may, to the extent necessary to address
2 any such national security interest, and subject to
3 the conditions specified in paragraph (2)—

4 “(A) temporarily delay the notice required
5 by subsection (b)(2);

6 “(B) make the determination required by
7 subsection (b)(4), regardless of whether the no-
8 tice required by subsection (b)(2) has been pro-
9 vided or whether the notified source at issue
10 has submitted any information in response to
11 such notice;

12 “(C) temporarily delay the notice required
13 by subsections (b)(4) and (b)(5); and

14 “(D) exercise the authority provided in
15 subsection (a) in accordance with such deter-
16 mination; and

17 “(2) shall take actions necessary to comply with
18 all requirements of subsection (b) as soon as prac-
19 ticable after addressing the urgent national security
20 interest that is the subject of paragraph (1), includ-
21 ing—

22 “(A) providing the notice required by sub-
23 section (b)(2);

24 “(B) promptly considering any information
25 submitted by the source at issue in response to

1 such notice, and making any appropriate modifications to the determination required by subsection (b)(4) based on such information; and

4 “(C) providing the notice required by subsections (b)(5) and (b)(6), including a description of such urgent national security, and any modifications to such determination made in accordance with subparagraph (B).

9 “(d) ANNUAL REVIEW OF DETERMINATIONS.—The
10 Secretary shall annually review all determinations made
11 under subsection (b).

12 “(e) DELEGATION.—The Secretary may not delegate
13 the authority provided in subsection (a) or the responsibility identified in subsection (d) to an official below the
15 Deputy Secretary.

16 “(f) LIMITATION OF REVIEW.—Notwithstanding any
17 other provision of law, no action taken by the Secretary
18 under subsection (a) may be subject to review in a bid
19 protest before the Government Accountability Office or in
20 any Federal court.

21 “(g) CONSULTATION.—In developing procedures and
22 guidelines for the implementation of the authorities described in this section, the Secretary shall review the procedures and guidelines utilized by the Department of Defense to carry out similar authorities.

1 “(h) DEFINITIONS.—In this section:

2 “(1) COVERED ARTICLE.—The term ‘covered
3 article’ means:

4 “(A) Information technology, including
5 cloud computing services of all types.

6 “(B) Telecommunications equipment.

7 “(C) Telecommunications services.

8 “(D) The processing of information on a
9 Federal or non-Federal information system,
10 subject to the requirements of the Controlled
11 Unclassified Information program of the De-
12 partment.

13 “(E) Hardware, systems, devices, software,
14 or services that include embedded or incidental
15 information technology.

16 “(2) COVERED PROCUREMENT.—The term ‘cov-
17 ered procurement’ means—

18 “(A) a source selection for a covered arti-
19 cle involving either a performance specification,
20 as provided in subsection (a)(3)(B) of section
21 3306 of title 41, United States Code, or an
22 evaluation factor, as provided in subsection
23 (c)(1)(A) of such section, relating to supply
24 chain risk, or with respect to which supply
25 chain risk considerations are included in the

1 Department's determination of whether a
2 source is a responsible source as defined in sec-
3 tion 113 of such title;

4 “(B) the consideration of proposals for and
5 issuance of a task or delivery order for a cov-
6 ered article, as provided in section 4106(d)(3)
7 of title 41, United States Code, with respect to
8 which the task or delivery order contract in-
9 cludes a contract clause establishing a require-
10 ment relating to supply chain risk;

11 “(C) any contract action involving a con-
12 tract for a covered article with respect to which
13 such contract includes a clause establishing re-
14 quirements relating to supply chain risk; or

15 “(D) any procurement made via Govern-
16 ment Purchase Care for a covered article when
17 supply chain risk has been identified as a con-
18 cern.

19 “(3) COVERED PROCUREMENT ACTION.—The
20 term ‘covered procurement action’ means any of the
21 following actions, if such action takes place in the
22 course of conducting a covered procurement:

23 “(A) The exclusion of a source that fails to
24 meet qualification requirements established pur-
25 suant to section 3311 of title 41, United States

1 Code, for the purpose of reducing supply chain
2 risk in the acquisition or use of a covered arti-
3 cle.

4 “(B) The exclusion of a source that fails to
5 achieve an acceptable rating with regard to an
6 evaluation factor providing for the consideration
7 of supply chain risk in the evaluation of pro-
8 posals for the award of a contract or the
9 issuance of a task or delivery order.

10 “(C) The determination that a source is
11 not a responsible source based on consider-
12 ations of supply chain risk.

13 “(D) The decision to withhold consent for
14 a contractor to subcontract with a particular
15 source or to direct a contractor to exclude a
16 particular source from consideration for a sub-
17 contract.

18 “(4) INFORMATION SYSTEM.—The term ‘infor-
19 mation system’ has the meaning given such term in
20 section 3502 of title 44, United States Code.

21 “(5) INFORMATION TECHNOLOGY.—The term
22 ‘information technology’ has the meaning given such
23 term in section 11101 of title 40, United States
24 Code.

1 “(6) RESPONSIBLE SOURCE.—The term ‘re-
2 sponsible source’ has the meaning given such term
3 in section 113 of title 41, United States Code.

4 “(7) SUPPLY CHAIN RISK.—The term ‘supply
5 chain risk’ means the risk that a malicious actor
6 may sabotage, maliciously introduce an unwanted
7 function, extract or modify data, or otherwise ma-
8 nicipulate the design, integrity, manufacturing, pro-
9 duction, distribution, installation, operation, or
10 maintenance of a covered article so as to surveil,
11 deny, disrupt, or otherwise manipulate the function,
12 use, or operation of the information technology or
13 information stored or transmitted on the covered ar-
14 ticles.

15 “(8) TELECOMMUNICATIONS EQUIPMENT.—The
16 term ‘telecommunications equipment’ has the mean-
17 ing given such term in section 153(52) of title 47,
18 United States Code.

19 “(9) TELECOMMUNICATIONS SERVICE.—The
20 term ‘telecommunications service’ has the meaning
21 given such term in section 153(53) of title 47,
22 United States Code.

23 “(i) EFFECTIVE DATE.—The requirements of this
24 section shall take effect on the date that is 90 days after
25 the date of the enactment of this Act and shall apply to—

1 “(1) contracts awarded on or after such date;

2 and

3 “(2) task and delivery orders issued on or after
4 such date pursuant to contracts awarded before, on,
5 or after such date.”.

6 (b) RULEMAKING.—Section 553 of title 5, United
7 States Code, and section 1707 of title 41, United States
8 Code, shall not apply to the Secretary of Homeland Secu-
9 rity when carrying out the authorities and responsibilities
10 under section 836 of the Homeland Security Act of 2002,
11 as added by subsection (a).

12 (c) CLERICAL AMENDMENT.—The table of contents
13 in section 1(b) of the Homeland Security Act of 2002 is
14 amended by inserting after the item relating to section
15 835 the following new item:

“See. 836. Requirements for information relating to supply chain risk.”.

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